

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Equal Employment Opportunity)	
Rules and Policies)	

To: The Commission

**REPLY COMMENTS OF THE
NORTH CAROLINA ASSOCIATION OF BROADCASTERS**

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center
Suite 1600 (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

*Counsel to the North Carolina Association of
Broadcasters*

May 29, 2002

Table of Contents

Summary	ii
Introduction and Statement of Interest	1
1. The FCC Should Allow Broadcasters to Utilize the Internet as an Exclusive Method of Disseminating Job Information If They So Choose	3
2. “Prong 1” Formal Recruitment, Even on a “Substantial Compliance” Basis, Should Not Be Required for Part-Time Vacancies	6
3. The Small Market Exemptions for the EEO Program Outreach and Recordkeeping Requirements Should Be Expanded	7
4. The Proposed “Prong 3” Menu Options Should Be Modified	9
Conclusion	10

Summary

NCAB and its constituent members remain committed to equal opportunity principles and to the historic purpose of the EEO rule, which is to prohibit discrimination and to offer equal employment opportunities to all qualified persons. In this regard, NCAB sponsors a variety of activities designed to promote the widespread dissemination of job opening information and, in general, equal employment opportunities in the broadcast industry.

In light of the experience of its members with the previous EEO rule, as well as its comments submitted in this proceeding in 1999, NCAB recommends the following modifications to the proposed EEO rule.

First, the Commission should allow broadcasters to utilize the Internet as an exclusive method of disseminating job opening information if they so choose. NCAB and its members have had considerable success in utilizing the Internet to publicize job opening information, and the Commission's new EEO rule should promote this use of this technology. Due to the ubiquitous and efficient nature of the Internet, use of the Internet to publicize job opening information, by itself, should be deemed sufficient to satisfy the widespread dissemination requirement.

Second, the Commission should make clear that formal recruitment requirements do not apply to part-time hires. The nature of part-time hires—in particular their often temporary nature—is such that they should be exempt from full-scale recruiting obligations. Moreover, the Commission's proposed "substantial compliance" standard will promote confusion and, possibly, litigation over what constitutes "substantial" compliance.

Third, the Commission should expand its small market exemptions from outreach and recordkeeping requirements. Specifically, NCAB believes that the exemption for station

employment units with fewer than five (5) full-time employees should be increased to station employment units with fifteen (15) or fewer full-time employees. Similarly, NCAB proposes that broadcast employment units employing more than fifteen (15) but less than twenty-five (25) full-time employees should be required to perform only two supplemental menu options over a two-year period. Finally, NCAB believes that the exemption from the EEO Public File Report, radio mid-term review, and other EEO reports should be extended to broadcast employment units employing twenty-five (25) or fewer full-time employees.

Finally, NCAB urges the Commission to clarify that the following outreach activities qualify as permissible menu options to satisfy the Prong 3 outreach requirement:

- (1) Participation in a job fair sponsored by a state broadcasters' trade association by having a station representative attend the job fair.
- (2) Participation in a speaker's bureau sponsored by a state broadcasters' trade association by having a station representative speak at a college, university, or school about careers in broadcasting.
- (3) Participation through a qualifying donation to a scholarship program sponsored by a state broadcasters' trade association designed to assist students who are interested in a career in broadcasting.
- (4) Participation through a qualifying donation to a "management institute" or similar program sponsored by a state broadcasters' trade association designed to provide management training in the broadcast industry to community members who are interested in a career in broadcasting.

In general, these options track programs which are largely in place in various states through state broadcasters associations and which serve the general purpose of allowing, in particular, small market broadcasters additional opportunities to participate in outreach activities through the auspices of their state broadcasters trade associations.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Equal Employment Opportunity)	
Rules and Policies)	

To: The Commission

**REPLY COMMENTS OF THE
NORTH CAROLINA ASSOCIATION OF BROADCASTERS**

The North Carolina Association of Broadcasters ("NCAB" or the "Association"), by and through its undersigned counsel and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, respectfully submits the following reply comments in response to the Commission's *Second Notice of Proposed Rule Making* (the "*Second Notice*"), FCC 01-363, 67 Fed. Reg. 1704 (released: Dec. 21, 2001)¹ in the above-referenced docket.

Introduction and Statement of Interest

NCAB is a voluntary trade association of some 32 television and 197 radio stations in North Carolina. These reply comments are filed in response to the Commission's *Second Notice* seeking

¹ These Reply Comments are timely filed pursuant to the Commission's *Order*, DA 02-1007 (released: May 1, 2002), establishing May 29, 2002 as the new filing deadline for reply comments.

comment on a proposed new broadcast equal employment opportunity ("EEO") rule. Part of the Commission's old EEO rule was held unconstitutional and the entire rule was vacated by the United States Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, *rehearing den.* 253 F.3d 732 (D.C. Cir. 2001), *cert. denied*, *MMTC v. MD/DC/DE Broadcasters Association*, No. 01-639 (Jan. 22, 2002) ("*Broadcasters Association*"). NCAB respectfully submits these reply comments in order to suggest specific revisions to the proposed EEO rule that are appropriate in light of the experiences of North Carolina broadcasters with the old EEO rule.

It should be emphasized that NCAB and its constituent members are committed to equal opportunity principles and to the historic purpose of the EEO rule, which is to offer equal employment opportunities to all qualified persons and to prohibit discrimination in employment. Minorities and women have served, and continue to serve, with distinction on the Board of Directors of NCAB and continue to be integrally involved in Association business and activities. NCAB also works closely with its members to enhance the broadcast employment opportunities for minorities and women. For example, NCAB maintains a job bank of broadcast employment opportunities which is available to the public on the Association's Internet website. The Association also disseminates job opening information to interested persons at job fairs and upon individual request. NCAB has also sponsored PSAs to encourage minority and female participation in the broadcast industry. In addition, NCAB routinely sends out newsletters and legal bulletins which address EEO issues and sponsors workshops on EEO matters at annual conventions and other meetings. In short, the promotion of equal employment opportunities for all persons is an integral aspect of NCAB's operations.

Nonetheless, NCAB believes that any new EEO rule that goes beyond merely prohibiting discrimination and imposes outreach and recordkeeping requirements should be narrowly tailored to achieve tangible benefits and should take account of the real-world impact of these requirements on the broadcast industry and, in particular, small broadcasters. In this regard, the proposed rule should not elevate form over substance and impose burdens which are not tied to perceived, demonstrable benefits. It is the experience of the Associations' members that overly burdensome administrative and recordkeeping requirements can lead to dislocations in recruiting efforts which are detrimental to the overall goal of encouraging wide participation in the broadcast industry. In particular, administrative and recordkeeping burdens on small broadcasters can be especially onerous given their more limited resources and smaller staffs.

In light of this experience as well as the initial comments submitted in this proceeding, NCAB proposes the following modifications of the proposed EEO rule.

1. The FCC Should Allow Broadcasters to Utilize the Internet as an Exclusive Method of Disseminating Job Information If They So Choose

As "Prong 1" of its proposed rule, the Commission proposes to require all broadcasters to widely disseminate information about job openings to all segments of the community to ensure that all qualified candidates have sufficient opportunity to compete for jobs in the broadcast industry. In the *Second Notice*, the Commission seeks comment on whether broadcasters should be allowed to utilize the Internet as an exclusive method of disseminating job information. The Commission states:

In the *Report and Order*, we concluded that the use of the internet as a recruiting tool was a promising development that should be

encouraged. However, we did not find that, as of that time, internet recruitment could be relied upon, by itself, to widely disseminate job vacancy information. Although we rejected reliance on the internet as a sole method of recruitment, we nonetheless recognized the internet as a valuable recruitment resource and did not preclude reliance on the internet as one of several recruitment methods that would collectively achieve broad outreach. We indicated that we would be prepared to revisit our position in this regard at a future time. We now note that more than two years have passed since the record compiled in the prior proceeding. We, therefore, request comment addressing the current situation of internet recruitment. We solicit comments as to whether the availability of the internet has expanded to the extent that it could be relied upon, by itself, to disseminate vacancy information through some or all communities.²

Based on the positive experience of its members with the use of the Internet to disseminate job opening information, NCAB believes that broadcasters should be allowed to utilize the Internet as an exclusive means of disseminating job information if they so choose.

In particular, NCAB agrees with the comments of Cox Communications, Inc., and the Various Radio Licensees³ concerning the utility of the Internet as a means of widely disseminating job opening information. Cox, in particular, has demonstrated how one cable operator has integrated Internet technology into its recruitment process to the benefit of its own recruiting efforts and to the public at large. Indeed, the Internet has reached a point where it is nearly ubiquitous in availability. Individuals who themselves do not have access to the Internet are able to access the Internet at public

² *Second Notice*, ¶ 26.

³ The Various Radio Licensees consist of the following broadcast groups: 910 Broadcasting Corp.; Amigo Broadcasting L.P.; The Berkshire Broadcasting Corporation; Holy Spirit Radio Foundation, Inc.; Kansas Capital Broadcasting Inc.; Mariner Broadcasting Limited Partnership; New Media Broadcasters, Inc.; Pecos Valley Broadcasting Co.; RAK Communications, Inc.; R & R Radio Corporation; San Joaquin Broadcasting Co.; Southwest Broadcasting Company, Inc.; Southwest Ohio Broadcast Service General Partnership; Tsunami Radio, LP; Washington Broadcasting Company; and WAYN, Inc.

libraries, schools, and businesses. In fact, the North Carolina Rural Internet Access Authority has recently concluded a study in which it found that every citizen in North Carolina currently has access to the Internet via a local phone call.⁴ As a result, any person who is interested in employment at a broadcast station can readily and efficiently obtain access to information concerning job openings over the Internet.

Similar to the experience of Cox, several NCAB members with station-affiliated websites have chosen to post job opening information on these websites and have experienced considerable success with this method of disseminating job opening information. Not only has this method of job dissemination proven efficient and effective for the stations it has also facilitated inquiries from members of the public interested in employment in the broadcast industry. Similarly, NCAB itself maintains an online job bank on its Internet website accessible at <www.ncbroadcast.com/job-bank>. On this website, NCAB members are able to post job opening information which is accessible by members of the public directly on the website. As part of its job bank service, NCAB also mails the job opening information to colleges and universities and any other persons across the state who subscribe to the service. NCAB will also keep employment resumes on file to refer to member stations who may call when trying to fill a position. In addition, members are able to post job openings on a national broadcast job bank maintained by the National Alliance of State Broadcast Associations (NASB) by going to the NCAB website and clicking on a link to the national site.

In sum, the Internet has been an especially valuable recruiting tool for NCAB's members and it will only continue to become a more vital part of the recruiting process. In adopting a new EEO

⁴ See <[http://www.e-nc.com/pdfs/publications/presentations/localdialup%20\(Website\).pdf](http://www.e-nc.com/pdfs/publications/presentations/localdialup%20(Website).pdf)> (summary of study).

rule with a job opening dissemination requirement, the FCC should allow broadcasters to utilize the Internet as an exclusive method of disseminating job vacancy information, either on a broadcaster's own website, on a website maintained by a state broadcasters association, or on the NASB website.

2. "Prong 1" Formal Recruitment, Even on a "Substantial Compliance" Basis, Should Not Be Required for Part-Time Vacancies

In the *Second Notice*, the Commission states that it proposes to continue the policy of its old EEO rule that broadcasters need only "substantially comply" with the requirement to recruit for every part-time vacancy. *See Second Notice*, ¶ 24. While NCAB agrees with the Commission's general acknowledgment that full-scale recruitment requirements should not apply to part-time hires, NCAB respectfully believes that the recruitment requirement should not apply at all to part-time vacancies.

The Commission's proposal to require a diminished level of recruitment with respect to part-time employees is a recognition of the realities of this type of employment. Many part-time hires are in fact made for the express purpose of filling a specific, temporary need or for providing employment opportunities to persons who are not otherwise qualified for full-time employment. In addition, many part-time hires are made by small broadcasters who only have limited employment opportunities. In such circumstances, the potential benefits of widespread recruitment do not outweigh the burden imposed on such broadcasters. Moreover, the maintenance of this "substantial compliance" standard will lead to considerable confusion among broadcasters, regulators, and concerned citizens concerning the underlying requirement and has the potential to foster litigation, disagreement, and overall dissatisfaction with the regulatory process.

For these reasons, in adopting a new EEO rule, the Commission should make clear that the

recruiting requirement applies only to full-time and not to part-time job vacancies.

3. The Small Market Exemptions for the EEO Program Outreach and Recordkeeping Requirements Should Be Expanded

In general, the Commission proposes to adopt its new EEO rule while maintaining the previous exemption for broadcasters with fewer than five (5) full-time employees. In addition, with respect to the proposed supplemental recruitment menu options, the Commission proposes to require employment units with between five (5) and ten (10) full-time employees to complete only two menu options over a two-year period rather than four menu options over a two-year period as is required for employment units with more than ten (10) full-time employees.

Based on the experience of its members, NCAB does not believe that the proposed exemptions correctly identify the numeric dividing line between small and other categories of broadcasters. Specifically, NCAB believes that the exemption for station employment units with fewer than five (5) full-time employees should be increased to station employment units with fifteen (15) or fewer full-time employees.⁵ Similarly, NCAB believes that broadcast employment units employing more than fifteen (15) but less than twenty-five (25) full-time employees should be required to perform only two supplemental menu options over a two-year period. Finally, NCAB believes that the exemption from the EEO Public File Report, radio mid-term review, and other EEO

⁵ NCAB believes that the primary effect of this exemption will be on radio broadcasters. Nonetheless, given that the proposed rule in issue in this proceeding was not extant in September 1, 1992, NCAB believes that the adoption of a new exemption limit does not run afoul of the limitation contained in 47 U.S.C. § 334. In the event the Commission determines that it is without statutory authority to alter this threshold for television broadcasters, at a minimum this increased threshold should apply to radio broadcasters.

reports⁶ should be extended to broadcast employment units employing twenty-five (25) or fewer full-time employees.

This proposal is consistent with the proposal of the Various Radio Licensees⁷ and NCAB's own experience.

This proposed increase in employee thresholds would be felt most dramatically in small markets. An increase in these thresholds is warranted in smaller markets where the community resources to perform the full complement of menu options is not readily available. A considerable amount of time and effort was needed in order to generate and maintain the required information under the Commission's old EEO rule. In particular, enormous resources were expended by smaller broadcasters in attending to such paperwork matters in a manner wholly out of proportion to the public benefits that were derived from those efforts.

In the present era of multiple ownership, any drain on the resources of small broadcasters is particularly acute. In light of the elimination of national ownership limits and the relaxation of local ownership limits brought on by the Telecommunications Act of 1996, multiple station ownership in individual markets is now the industry norm and broadcast employment units which have twenty-five or fewer full time employees (including employees of commonly-owned stations in the same market) are now considered "small" stations. Thus, smaller broadcasters are now forced to compete with the greater financial and manpower resources of "super duopoly" broadcast stations. Any drain on resources caused by ineffectual EEO paperwork requirements will further impede the ability of

⁶ The reports include the Broadcast EEO Program Report (Form 396) (filing only to certify size exemption), Model EEO Program (Form 396-A) (filing only to certify size exemption), and Annual Employment Report (Form 394-B) (filing only to certify size exemption).

⁷ See Comments of Various Radio Licensees, at 3.

smaller broadcasters to fairly compete with the larger station operations without any consequent benefit to the public.

Moreover, any self-assessment reporting and recordkeeping requirements adopted by the Commission should be reserved for only the largest broadcast employers because such requirements can crucially delay hiring decisions in small stations. In small stations, turnover is high and the need to fill vacancies quickly is great because employees are spread out over many duties, such as on-air, marketing, sales, promotions, clerical, management, engineering, etc. No single department will employ many people, and one less person for any length of time in any job category will have an adverse effect on the station. Under the Commission's old EEO rule, this adversity was compounded by the length of time spent recruiting the proper applicant pool and assigning much-needed staff to EEO administrative responsibilities. A twenty-five employee or fewer exemption standard would free small broadcasters from these burdensome administrative and recordkeeping requirements and permit small stations to fill vacancies quickly, while doing no violence to the underlying EEO principles.

For these reasons, NCAB urges the Commission, in adopting a new EEO rule, to revise its numeric safe harbor to provide relaxes recruitment and recordkeeping obligations for broadcast employment units with twenty-five (25) or fewer full-time employees.

4. The Proposed "Prong 3" Menu Options Should Be Modified

In its proposed EEO rule, the Commission has identified a menu of options which could be used to satisfy the "Prong 3" outreach obligation. *See Second Notice*, ¶ 30. In addition to the menu options listed, the Commission should clarify that the following qualify as permissible menu options:

- (1) Participation in a job fair sponsored by a state broadcasters' trade association by having a station representative attend the job fair.
- (2) Participation in a speaker's bureau sponsored by a state broadcasters' trade association by having a station representative speak at a college, university, or school about careers in broadcasting.
- (3) Participation through a qualifying donation to a scholarship program sponsored by a state broadcasters' trade association designed to assist students who are interested in a career in broadcasting.
- (4) Participation through a qualifying donation to a "management institute" or similar program sponsored by a state broadcasters' trade association designed to provide management training in the broadcast industry to community members who are interested in a career in broadcasting.

In general, these options track programs which are largely in place or have been used in the past by NCAB to promote EEO and the development of management talent and broadcasting skills. These additional options serve the general purpose of allowing, in particular, small market broadcasters additional opportunities to participate in outreach activities through the auspices of their state broadcasters trade association. Each of the specified options facilitates community outreach consistent with the Commission's goals.

For these reasons, NCAB respectfully requests that the Commission clarify that the above-specified activities qualify as permissible menu options which satisfy the "Prong 3" outreach requirement.

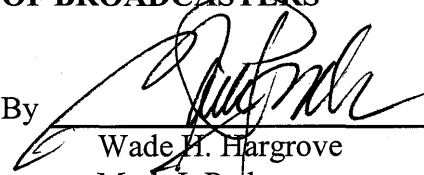
Conclusion

For the reasons set forth herein, NCAB respectfully urges the Commission, in adopting a new EEO rule, to modify its proposed rule as set forth specifically herein.

Respectfully submitted,

**NORTH CAROLINA ASSOCIATION
OF BROADCASTERS**

By



Wade H. Hargrove

Mark J. Prak

Marcus W. Trathen

Its Counsel

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center
Suite 1600 (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

May 29, 2002